IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1022 of 1994

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAJESHKUMAR N PARMAR - Petitioner(s)

Versus

AMRITLAL MULJIBHAI VAGHELA - Respondent(s)

==========

Appearance :

MR DR BHATT for Petitioner No(s).: 1.

MS RV ACHARYA for Respondent No(s).: 1.

==========

CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 23/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 2nd March, 1993 of the learned Extra Assistant Judge, Ahmedabad Rural passed in Regular Civil Appeal No.25/1992, the respondent (plaintiff in H.R.P. Civil

Suit No.580/1985) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "**the Rent Act**").

The petitioner is the owner of the suit house situated at Sadarbazar Camp, Ahmedabad. Part of the suit house a room admeasuring 22 feet x 12 feet was leased on 1st April, 1978 to the respondent-defendant for a monthly rent of Rs.50=00. As the defendant was in arrears of rent since 1st October, 1983 and as the defendant had neglected to pay the taxes since the year 1982-83, after giving notice of demand dated 20th May, 1985, the plaintiff instituted the aforesaid H.R.P. Civil Suit No.580/1985 in the Court of Civil Judge (S.D.), Ahmedabad Rural for recovery of possession of the suit premises and of amount of arrears of rent. The suit was contested by the defendant. It was denied that the defendant was in arrears of rent as alleged. It was stated that the defendant had paid the rent but the plaintiff had not issued the receipts. Pending the suit the plaintiff moved application Exh.12 and prayed for a direction to the defendant to deposit the amount of arrears of rent and

the rent regularly every month. The said application was contested by the defendant. By order dated 25th November, 1988 made below application Exh.12, the defendant was directed to deposit the amount of arrears of rent due within one month from the date of the order and to deposit the rent regularly thereafter. It appears that in spite of the said order the defendant neglected to deposit the amount of arrears of rent and to deposit the rent regularly every month. The plaintiff, therefore, moved application Exh.16 to strike off the defence of the defendant as envisaged by Section 11(4) of the Rent Act. The said application was served upon the defendant. The defendant, however, did not contest the said application. By order dated 31st July, 1989 the defendant's right to appear in and to defend the suit was cancelled. The learned Civil Judge, by judgment and order dated 25th November, 1991, held that the defendant had neglected to pay the rent and that he was not ready and willing to pay the rent. The learned Civil Judge allowed the suit and passed decree for possession and for the amount of rent due in favour of the plaintiff.

Feeling aggrieved, the defendant preferred Regular

Civil Appeal No.25/1992 in the Court of District Judge, Ahmedabad Rural. The learned Assistant Judge was pleased to hold that as the defendant was required to pay taxes, the rent cannot be said to be payable by the month. No decree for eviction could, therefore, be passed under Section 12(3)(a) of the Rent Act. It was further held that the learned Civil Judge had failed to follow the procedure as envisaged by Section 11(4) of the Rent Act and had wrongly passed the order disentitling the defendant from appearing in and defending the suit. The lower appellate Court, therefore, by impugned judgment set-aside the decree for possession passed against the defendant and confirmed the decree for the amount of arrears of rent due. Therefore, the present Revision Application.

As recorded herein above, both the Courts below have found that the defendant was indeed a tenant in default and that the rent was due and payable by the defendant as alleged. It is true that since the defendant was required to pay the taxes the rent cannot be said to be payable by the month. No decree for eviction could, therefore, be passed against the defendant under Section 12(3)(a) of

the Rent Act.

Two questions arise in this Revision Application : (1) whether the lower appellate Court is right in holding that the order made below application Exh.16 under Section 11(4) of the Rent Act was vitiated; (2) whether the lower appellate Court has erred in holding that the decree for eviction was passed under Section 12(3)(a) of the Rent Act and was unsustainable.

In my view, the lower appellate Court is not right in holding that the decree for eviction had been passed by the Civil Court under Section 12(3)(a) of the Rent Act. The learned Civil Judge had not said that the defendant was liable for eviction under Section 12(3)(a) of the Rent Act. As Section 12(3)(a) of the Rent Act is not applicable, on the facts of the case, the Court was required to examine whether the defendant was entitled to protection under Section 12(3)(b) of the Rent Act. Section 12(3)(b) of the Rent Act confers protection upon the tenant against the decree for eviction provided he complies with the conditions mentioned therein. Such protection is conferred upon the tenant on condition that

on the first day of hearing of the suit or on or before such other date as the Court may fix the tenant pays or tenders in Court the standard rent and permitted increases till the suit is finally decided. Admittedly, in the present case, the defendant failed to deposit the rent then due on the first day of hearing of the suit and was in arrears of rent till the date of the passing of the decree. Hence, in my view, the defendant cannot be said to have complied with the conditions mentioned in Section 12(3)(b) of the Rent Act and has, thus, forfeited right to protection under the said sub-section.

In the matter of **Pirubhai Ramjubhai v/s. Trikamlal Nanjilal** [AIR 1969 GUJARAT 285] after the order made under Section 11(4) of the Rent Act the tenant deposited part of the amount ordered to be deposited and for the remainder he sought extension of time. While rejecting the application for extension of time the learned trial Judge ordered that the defendant was not entitled to appear in and to defend the suit unless otherwise ordered. In the circumstances, in Revision Application before this Court, this court held that, "**...On a plain reading of the provision the direction must precede the**

consequence. The direction contemplated is one under which the tenant knows that if he fails to comply with the order of deposit, the consequence as set out in the direction shall follow. Till such direction has been issued, the penal consequence provided cannot follow. This is as it should be, because the tenant is to be deprived of the right to defend a right normally available to him and inherent in the rule of law.” In the present case, the lower appellate Court has held that such procedure was not followed by the trial Court i.e. the defendant was not notified the consequences of his not complying with the order made below Exh.12. In my view, it is wrong to say that the defendant was not notified of the consequences. As recorded herein above, the defendant's right to appear in and to defend the suit was not cancelled automatically or without notice to him. As the defendant failed to comply with the order made below Exh.12, the plaintiff had, on 17th January, 1989, filed application Exh.16 seeking order under Section 11(4) of the Rent Act. The said application Exh.16 was served upon the defendant. Nevertheless, neither the defendant contested the said application nor did he appear before the Court. Thus, the order depriving the

defendant of his valuable right to defend the suit was made after the defendant was duly notified of the consequences of his neglect to comply with the order made below application Exh.12. I am, therefore, of the view that the order made below application Exh.16 was not vitiated as held by the lower appellate Court. As the defendant forfeited right to protection under Section 12(3)(b) of the Rent Act by not depositing the amount of rent then due and the rent thereafter, the defendant had exposed himself to a decree for eviction under Section 12(3)(b) of the Rent Act.

In view of the above discussion, the Revision Application is allowed. The judgment and order dated 2nd March, 1993 of the learned Extra Assistant Judge, Ahmedabad Rural in Regular Civil Appeal No.25/1992 is quashed and set-aside. The judgment and order of the learned Civil Judge (S.D.), Ahmedabad Rural passed in H.R.P. Civil Suit No.580/1985 is restored. Rule is made absolute with cost. Interim relief stands vacated.

(Ms. R.M.DOSHIT, J.)

/moin